

<b>RETURN DATE: NOVEMBER 20, 2018</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>JOSEPH MINERI AND</b>	:	<b>JUDICIAL DISTRICT OF</b>
<b>BLUE HILLS DEVELOPMENT, LLC</b>	:	<b>NEW HAVEN</b>
	:	
<b>V.</b>	:	<b>AT NEW HAVEN</b>
	:	
<b>PLANNING AND ZONING COMMISSION</b>	:	
<b>OF THE TOWN OF NORTH HAVEN</b>	:	
	:	<b>OCTOBER 19, 2018</b>

**SUMMONS AND CITATION**

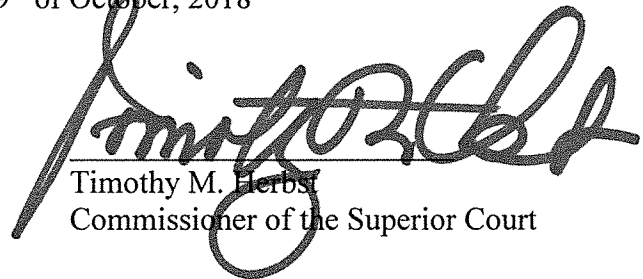
BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to summon the **Planning and Zoning Commission of the Town of North Haven**, to appear before the Superior Court for the Judicial District of New Haven at New Haven on the Return Date of November 20, 2018, said appearance to be made by filing a written appearance with the Clerk of said Court on or before the second day following said Return Date, then and there to answer unto the complaint and appeal of **Joseph Mineri of 11 Allendale Drive, North Haven, Connecticut and Blue Hills Development, LLC, of 17 Carrington Drive, Greenwich, Connecticut** as follows:

(1) By leaving two true and attested copies of the complaint and appeal and this citation and summons and recognizance with the Town Clerk of the Town of North Haven and directing said Clerk to retain one copy and forward the second copy to the Planning and Zoning Commission of the Town of North Haven, at least twelve (12) days before said Return Date and due return make, in the manner provided by law for the service of civil process.

Plaintiffs, Joseph Mineri and Blue Hills Development, LLC, as surety are jointly and severally recognized in the sum of \$500.00 to prosecute this appeal to effect and to comply with the orders and decrees of this Court.

Hereof fail not, but of this writ with your doings thereon due service and return make.

Dated at Orange, Connecticut on this 19<sup>th</sup> of October, 2018



Timothy M. Herbst  
Commissioner of the Superior Court

Please enter the appearance of  
Cohen and Wolf, P.C. for the Plaintiff:

Cohen and Wolf, P.C.  
657 Orange Center Road  
Orange, CT 06477  
Phone: 203-298-4066  
Fax: 203-298-4068  
Juris No. 432240  
Their Attorneys

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### **APPEAL AND COMPLAINT**

To the Superior Court for the Judicial District of New Haven at New Haven come Joseph Mineri and Blue Hills Development, LLC ("Plaintiffs"), appealing from a decision of the Planning and Zoning Commission of the Town of North Haven (the "Defendant Commission"), who complain and say that:

1. The Plaintiffs were applicants and developers of three building lots at the corner of Blue Hills Road and Kings Highway in the Town of North Haven, Connecticut. These lots are also known as 2 Blue Hills Road, 4 Blue Hills Road and 217 Kings Highway in the Town of North Haven, Connecticut (the "Plaintiffs' Property").

2. The Defendant Commission is the agency charged pursuant to the provisions of the Connecticut General Statutes and the Zoning and Subdivision Regulations of the Town of North Haven (the "Regulations") with, among other powers, the authority to hear and act upon applications for subdivision approval, special permits, site plans, and zone changes, for the proposed use and development of land within the Town of North Haven.

3. The Plaintiffs' Property consists of three approved building lots in the R-40 residential zone.

4. In the Spring of 2014, the Plaintiffs submitted an application for subdivision to the North Haven Planning and Zoning Commission to divide 3.77 acres into 3 separate buildings lots.

5. On May 4, 2014, the North Haven Planning and Zoning Commission voted to approve the subdivision as proposed by the Plaintiffs.

6. On May 9, 2014, the Plaintiffs received written notice of their approval from the Defendant Commission for subdivision of 3 lots which created 2 Blue Hills Road, 4 Blue Hills Road and 217 Kings Highway. The letter indicated that the subdivision approval was unanimous.

7. In the May 9, 2014 letter, a list of conditions accompanied the approval. Nowhere in the 2014 letter granting conditional approval was the issue of water supply mentioned or referenced as a condition by the Defendant Commission.

8. After approval, during the construction phase, the Plaintiffs learned that the costs of installing a water line along Kings Highway to service only one lot would be cost prohibitive.

9. At the time of the 2014 subdivision application, water supply for the original lot could have come from Blue Hills Road servicing all 3.77 acres. Water for Lot 1 and Lot 3, known as 2 Blue Hills Road and 4 Blue Hills Road, is currently provided from Blue Hills Road.

10. On or about July 9, 2018, the Plaintiffs filed an application to the Defendant Commission seeking a lot line revision, modifying the original three lot subdivision approved by the Defendant Commission in 2014. The proposed lot line revision fully comported with the Regulations.

11. On August 16, 2018, the Plaintiffs' attorney advised the Defendant Commission and its attorney of precedent decided by the Connecticut Appellate Court in Kings Highway

Associates v. Planning and Zoning Commission of the Town of North Haven, 114 Conn. App. 509 (2009) (“the Kings Highway Appeal”). The Kings Highway Appeal is in close proximity to the Plaintiffs’ property.

12. Previously, in the Kings Highway Appeal, the Defendant Commission denied a subdivision application because the applicant did not extend a water main along the entire length of land bordering Kings Highway. The issues in that case are directly on point with the issues that are the basis of this appeal.

13. The applicant in the Kings Highway Appeal appealed the Defendant Commission’s decision. The trial court sustained the appeal and the Connecticut Appellate Court affirmed the decision of the trial court. Id. at 519.

14. The only reference to water supply in the Regulations states, in relevant part, that “All subdivision plans shall make proper provision for water supply.” Regulations § 3.3.

15. In response to the Plaintiffs’ application for lot line revision and subdivision modification, on August 14, 2018, the Regional Water Authority provided Plaintiff with a letter and a map indicating that adequate water supply had been provided to 217 Kings Highway from Blue Hills Road. Like the Kings Highway Associates decision, in the present case, “there is no substantial evidence in the record that the land will not be supplied with water as required by General Statutes § 7-148(c).” Id. at 519.

16. Notwithstanding the precedent from the Superior Court and the Appellate Court introduced and made part of the record, which clearly articulates that the Defendant Commission, acting in an administrative capacity, cannot consider the regulations of another agency outside of the scope of its authority, the attorney for the Defendant Commission advised

the Defendant Commission that it could consider regulations outside of the Defendant Commission's purview as a basis to deny the Plaintiffs' application;

17. Neither the Defendant Commission nor its Attorney could articulate how the application for lot line revision and subdivision modification did not comply with the Regulations as they relate to subdivision.

18. When acting in an administrative capacity, the Defendant Commission can only rely upon the Regulations to either approve or deny a subdivision application or subdivision modification;

19. On October 1, 2018, the Defendant Commission denied the Plaintiffs' application. Notice of the Commission's decision was published in the *North Haven Courier* on October 11, 2018.

20. In denying the Plaintiffs' application, the Defendant Commission acted illegally, arbitrarily, capriciously, and in abuse of the discretion vested in it, for one or more of the following reasons:

- a. The Plaintiffs' application fully complied with the Regulations;
- b. The Defendant Commission had no authority to consider and rely on regulations of another governmental authority to deny the Plaintiffs' application;
- c. The Defendant Commission has treated the Plaintiffs inequitably and violated their constitutional rights, in that they have been forced to bear the significant financial burden of extending the water main in the Town for the benefit of others, notwithstanding the plausible alternative the Plaintiffs presented to the Defendant Commission.

21. As the applicant and developers of the property, the Plaintiffs are aggrieved as a result of the actions of the Defendant Commission.

**WHEREFORE**, Plaintiffs request that the Court:

1. Sustain the appeal and render judgment in favor of Plaintiffs;
2. Enter an order finding that the Defendant Commission's actions were unlawful and null and void and further order the Defendant Commission to approve the Plaintiffs' application;
3. Award costs as provided in Section 8-8(i) of the Connecticut General Statutes; and
4. Grant such other and further relief as the Court deems just and equitable.

**THE PLAINTIFFS,**

By: 

Timothy M. Herbst  
Cohen and Wolf, P.C.  
657 Orange Center Road  
Orange, CT 06477  
Email: [therbst@cohenandwolf.com](mailto:therbst@cohenandwolf.com)  
Phone: 203-298-4066  
Fax: 203-298-4068  
Juris No. 432240  
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**RECOGNIZANCE AND BOND**

You, Joseph Mineri, of North Haven, Connecticut and Blue Hills Development, LLC of Greenwich, Connecticut as surety, acknowledge yourselves jointly and severally bound unto the Defendants in a recognizance of \$500.00 that the Plaintiffs shall prosecute this appeal to full effect, and that the Plaintiffs shall pay any costs for which judgment may be rendered against them thereon.

THE PLAINTIFFS,

By: 

Timothy M. Herbst  
Cohen and Wolf, P.C.  
657 Orange Center Road  
Orange, CT 06477  
Email: therbst@cohenandwolf.com  
Phone: 203-298-4066  
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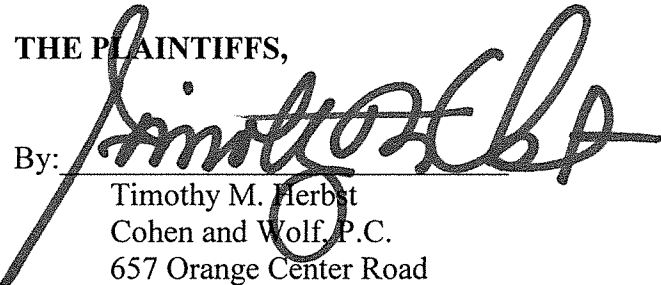
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**STATEMENT OF AMOUNT IN DEMAND**

The Plaintiffs claim other relief in addition to or in lieu of money or damages.

THE PLAINTIFFS,

By:

  
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